

## APPEAL NO. 010660

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 15, 2001. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a repetitive trauma injury while in the course and scope of his employment; that the claimant did not have disability; that, had the claimant sustained a compensable injury, the date of injury is \_\_\_\_\_; and that the claimant did not timely report an alleged injury to the employer. On appeal, the claimant expresses disagreement with these determinations. The respondent (carrier) urges affirmance.

### DECISION

Affirmed.

A "compensable injury" is defined as "an injury that arises out of and in the course and scope of employment for which compensation is payable under this subtitle." Section 401.011(10). The claimant had the burden to prove that he was injured in the course and scope of his employment. Reed v. Aetna Casualty & Surety Co., 535 S.W.2d 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.). The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). Conflicting evidence was presented at the hearing regarding whether the claimant sustained an injury while in the course and scope of his employment. Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. The hearing officer determined that the claimant did not meet his burden of proving that he sustained a compensable injury. The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951).

"Disability" is defined as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Since we find no error in the hearing officer's determination that the claimant did not sustain a compensable injury, there can be no disability.

The claimant also challenges the factual finding that he did not timely report the alleged injury to his employer. As fact finder, the hearing officer was within his province in determining that, had the claimant in fact sustained a compensable injury on \_\_\_\_\_, he did not report it within 30 days. After reviewing the record in this case, we perceive no error in the hearing officer's determination that the claimant did not timely report the alleged injury.

The decision and order of the hearing officer are affirmed.

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Michael B. McShane  
Appeals Judge